IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
Civil Revision No.63 of 2007.
Date of decision: 23.07.2007

Ravi Sawlani ….**Petitioner**

Versus

Bishop Cotton School ……**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **M/s.Ankush Dass Sood & Sunil Mohan Goel, Advocates.**

For the Respondent: **M/s.R.S. Ahuja and C.N. Singh, Advocates.**

Dev Darshan Sud,J.

This revision petition has been preferred by the petitioner who is the plaintiff before the learned trial Court against the order passed by the learned Civil Judge (Senior Division), Shimla, dismissing the application of the plaintiff for permission to amend the plaint.

The plaintiff had instituted a suit against the defendants inter alia under Sections 34 and 38 of the Specific Relief Act (hereinafter referred to as the "Act") praying therein that a decree for declaration be granted in his favour and against the respondents declaring that the termination of the services as conveyed to the plaintiff-petitioner by a

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

letter dated 30.3.2006 is wrong, illegal and in violation of the service rules applicable to the plaintiff; a consequential relief in the nature of a decree for permanent prohibitory injunction restraining the defendants-respondents from terminating his services. An alternate prayer for decree for recovery of the remaining salary for the period for which the plaintiff was to serve was also prayed for alongwith compensation/damages.

An ex-parte ad-interim injunction was granted in favour of the plaintiff which was later on vacated and an appeal preferred by the plaintiff was rejected by the learned Appellate Court. Plaintiff/petitioner thereafter moved an application under sub-section (5) and its proviso of Section 21 of the Act read with Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint. The plaintiff sought amendment of paragraphs 11 and 14 of the suit wherein, the plaintiff sought to incorporate the fact regarding his quantified claim of salary for the remaining period of his service and further sought to quantify damages, for the harassment and mental pain and agony which he underwent. In paragraph-14 of the plaint which relates to the grant of relief, the plaintiff prayed that a decree in the sum of Rs.6.67 lacs be granted in his favour.

This application was resisted by the defendants on a number of grounds including the fact

that the pleadings had not been made in the plaint by exercise of a due diligence and the facts alleged could not be allowed to be incorporated by way of an amendment at this stage.

The trial Court dismissed the application holding that it is yet to be proved by the plaintiff that there was no concurrence of the Board of Governors including the Chairman approving the termination of the service of the plaintiff. The Court observed that this point is yet to be established on the basis of evidence and the burden to prove that the order is illegal is on the plaintiff. The Court also holds that by way of the amendment the plaintiff is enforcing a contract of personal service which is otherwise not enforceable. Lastly, the Court observed that the plaintiff-petitioner has not been able to explain that why inspite of due diligence he could not plead the matter before the Court before commencement of the trial.

I have heard learned counsel for the parties.

The trial Court has not at all applied its mind to the facts of the case. It ignored the pleadings of the parties and also proceeded to prejudge issues which were the subject matter of trial in the suit and on which evidence had to be led. Having noticed that the pleas have yet to be decided by the plaintiff, the trial Court acted illegally in

the exercise of the jurisdiction in observing that the plaintiff seeks to enforce certain rights which are not available to him. This pre-judges the entire case of the plaintiff and such an exercise undertaken by the Court at the stage of consideration of miscellaneous application is impermissible in law.

That apart, the trial Court also ignored the statutory mandate of Section 21 of the Specific Relief Act, 1963. Sub-section (5) of Section 21 provides:-

> ***"21(1)*** *In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.*
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> ***(2)*** … … … … … … … … …
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> ***(3)*** … … … … … … … … …
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> ***(4)*** … … … … … … … … …
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> ***(5)*** *No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:*
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> *Provided that where the plaintiff has not claimed any such compensation in the plaint the Court shall, at any stage of the proceeding, allow him to amend the plaint, on such terms as may be just, for including a claim for such compensation."*

A bare reading of sub-section (5) and the proviso should have been sufficient to allow the amendment as prayed for by the plaintiff. The proviso

to sub-section (5) is clear and unequivocal vesting powers in the Court to grant amendment at any stage of the suit. The matter is no longer res integra.

This Court in ***Sunil Kuthiala*** *vs.* ***Ajwesh Sood and others, Latest HLJ 2006 (HP) 1055 and in Sunil*** *vs.* ***Sudha Devi and Others, CR No.112 of 2006, decided on03.05.2007,*** has considered the matter in detail and held that the amendment prayed for at any stage under the Act as contemplated by Section 21 can be allowed at any stage of the suit.

The submission made by the learned counsel appearing for the respondent, that the petition is barred by the principles of estoppel and acquiescence in claiming the amendment as it was moved after the relief of injunction was refused to the plaintiff at the interim stage, cannot be accepted. The second submission regarding the strict applicability of the principle of Order 6 Rule 17 barring the right of the plaintiff to move for amendment as the fact could have been pleaded in the first instance, also cannot be accepted. On the first point urged, there is no acquiescence on the part of the plaintiff. In the un-amended plaint, in paragraph-11, the plaintiff clearly averred that the termination of the services of the plaintiff would result in loss to him and that he would be entitled to damages by way of compensation. The plaintiff had also submitted that he prays for permission to urge this right at a later stage.

Prayer clause-(c) of the plaint is clear and unequivocal in the following terms:-

> *"A decree in addition and in alternative for recovery of remaining salary of the probation period and for damages/compensation as this Hon'ble Court deems fit in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants as reserved in the plaint".*

By way of the present amendment, the plaintiff-petitioner has not introduced any new plea or changed the nature of the case, nor has he raised a plea which was abandoned by him at the initial stage, but has merely quantified the damages/compensation which he seeks. According to the plaintiff-petitioner, this amendment was prayed as both the trial Court and the Appellate Court had refused to grant injunction against the purported illegal termination.

On the second point raised by the respondent that the amendment is barred under Order 6 Rule 17, it needs to be noticed that the Specific Relief Act is a special statute. Section 21 provides in clear terms the legislative intent that an amendment can be made at any stage of the proceedings. It does not preclude the Court from granting such permission for amendment by incorporation of the limitation envisaged by Order

6 Rule 17 of the Code of Civil Procedure which is a general provision and cannot be interpreted in a manner to nullify the legislative intent as enacted in Section 21 of the Act.

On the other submissions made regarding estoppel and acquiescence, it may be noticed that the plea having been taken up at the very first instance, no inference can be made regarding abandonment of the plea or acquiescence in the proceedings. The order of the trial Court discloses exercise of jurisdiction illegally and a total misdirection on the point involved. Preemptory adjudication on the rights asserted by the plaintiff at the inter-locutary stage is impermissible. The order also discloses a total lack of understanding the fundamental principles applicable for trial of suits under the Specific Relief Act.

This revision petition is accordingly allowed. The order of the trial dated 4.5.2007 is quashed and set aside. The plaintiff is granted permission to amend the plaint as prayed for. Of-course, the plaintiff would be liable to fix court fee on the amount as claimed by him.

Parties are directed to appear before the trial Court on ***27.9.2007.***

July 23, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**